

DISTRICT COURT JUDGE BENJAMIN H. SETTLE
MAGISTRATE JUDGE KAREN L. STROMBOM

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

THOMAS W.S. RICHEY,

Plaintiff,

v.

D. DAHNE,

Defendant.

NO. 3:12-CV-05060-BHS-KLS

DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
STAY OF PROCEEDINGS AND
MOTION TO COMPEL
DISCOVERY

Defendant, DENNIS DAHNE, by and through his attorneys of record, ROBERT W. FERGUSON, Attorney General, and HALEY BEACH, Assistant Attorney General, respectfully submits the following Response to Plaintiff's Motion for Stay of Proceedings and Motion to Compel Discovery, ECF No. 111, and requests that the Court deny Plaintiff's motions.

I. RESPONSE

A. Motion to Stay

As stated in the Defendant's Status Report, Defendant does not believe there is good cause to delay proceedings in this matter. The Court should set the evidentiary hearing for one of the dates suggested by Defendant in the Status Report, and simply allow the interim time for any discovery or other hearing preparation. Defendant suggests that 45 days from the date of the Court's July 18, 2019 Order is more than adequate time for this purpose. Subsequent to the Court's July 18, 2019 Order, Plaintiff propounded discovery to Defendant. Defendant will have responded to such discovery within the 45-day timeframe suggested above. Defendant also

1 anticipates that the Court will have ruled on the other pending motions by that time, including
 2 Defendant's Motion for a Court Order Allowing Submission of the Contents of Plaintiff's
 3 Recorded Phone Conversations, ECF No. 101, which Defendant believes will assist the Court in
 4 resolving key issues of fact. Further stay or delay is unwarranted and unnecessary for the parties
 5 to resolve the issue of fact identified in the Court's July 18, 2019 Order.

6 **B. Motion to Compel**

7 Plaintiff's motion to compel is unfounded. First, there is no allegation that Defendant has
 8 failed to provide a discovery response under Fed. R. Civ. P. 37(a)(3). As represented above,
 9 Plaintiff propounded discovery after the Court's July 18, 2019 Order, meaning that applicable
 10 response periods have not yet lapsed. Second, Plaintiff's motion lacks the certification of any
 11 attempt to meet and confer regarding discovery, as required by Fed. R. Civ. P. 37(a)(1) and Local
 12 Civil Rule 37(a)(1). Plaintiff appears to use the motion to compel as a means for initiating
 13 discovery, which is impermissible. The Court should deny Plaintiff's motion to compel for these
 14 reasons.

15 **II. CONCLUSION**

16 Defendant respectfully requests that the Court deny Plaintiff's motion for a stay of
 17 proceedings and Plaintiff's motion to compel discovery.

18 RESPECTFULLY SUBMITTED this 6th day of August, 2019.

19 ROBERT W. FERGUSON
 20 Attorney General

21 s/ Haley Beach
 22 HALEY BEACH, WSBA #44731
 23 Assistant Attorney General
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CERTIFICATE OF SERVICE

I certify that on the date below I caused to be electronically filed the DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS AND MOTION TO COMPEL DISCOVERY with the Clerk of the Court using the CM/ECF system and I hereby certify that I have mailed a copy of the document through United States Postal Service to the following non CM/ECF participant:

THOMAS W.S. RICHEY, DOC #929444
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MOROE WA 98272-7002

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 6th day of August, 2019, at Olympia, Washington.

s/ Cherrie Melby
CHERRIE MELBY
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